IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 18582 of 2007(K)

AGAINST THE ORDER IN EP.1772/04 IN OS.1066/2000 of II ADDL.M.C.,THRISSUR

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PETITIONERS:

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1. RAPHEAL, S/O. KALLIKADAN PARINCHU,
   KODANOOR, THRISSUR.

2. VILSON, S/O. ALAPPADAN MATHEW,
   OLLUKKARA VILLAGE, PARAVATTANI DESOM, THRISSUR.

BY ADV. SRI.K.A.SREEJITH

RESPONDENT:

GOODWILL HIRE PURCHASE &
CHITS AND FINANCE (P) LTD., THRISSUR.

BY ADV. SRI.V.RAMKUMAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioners' Exts:

Ext.P1 true copy of evidence adduced by decree holder (respondent)

Ext.P1(a) true copy of evidence adduced by judgment debtors (Petitioners)

Ext.P2 true copy of judgment dated 17.10.06 in W.P.(C) 17771/05 on the files of this Hon'ble Court.

Ext.P3 true copy of order dtd. 22.1.07 in E.P. 1772/0-4 in O.S.1066/2000.

M.N.Krishnan, J.

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W.P(C).No.18582 of 2007

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Dated this the 18th day of September, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside Extr.P3 order whereby the court directed arrest of judgment debtors 1 and 3. A perusal of the order of the court below would show that the materials are lacking to pass such order at that stage. PW1 has been examined and DWs 1 and 2 have also been examined. There is oath against oath and by ordering arrest, the court is attempting to interfere with the civil liberty of a person. The court found that since DW1 has got a family to be looked after and that there is nothing to show that he was suffering from any ailment, it must be presumed to order arrest. Unlike in a case of Section 125 of Cr.P.C., when the court is considering the case under Section 51 of C.P.C. there must be at least some tangible evidence, which would satisfy the conscience of the court to order arrest. But at the same time, I feel that an opportunity can

be given to both sides to substantiate their respective contentions.

2. Therefore, the order under challenge is set aside and the matter is remitted back to the court below for consideration after affording an opportunity to the decree holder as well as judgment debtors 1 and 3 to adduce evidence in support of their respective contentions and then the court bearing in mind the principles to be followed when arrest is to be ordered decide the matter in accordance with law.

Writ Petition is disposed of as above. Parties are directed to appear before the Executing Court on 24.10.2007.

M.N.Krishnan,
Judge.

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